

IN THE
Supreme Court of the United States
October Term, 1973

No. 73-1285

WILLIAM B. RUCKELSHAUS, Attorney General of the United States, and NORMAN A. GARDNER, Director, United States Bureau of Prisons, Petitioners,

v.

THE WASHINGTON POST COMPANY and
RAY H. BARNHART, Respondents.

BRIEF IN RESPONSE TO
PETITION FOR CERTIORARI

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OCTOBER TERM, 1973

No. 73-1205

WILLIAM B. SANDE, Attorney General of the United
States, and NORMAN A. CARLSON, Director, United
States Bureau of Prisons, *Petitioners,*

v.

THE WASHINGTON POST COMPANY and
BEN H. BAGDIKIAN, *Respondents.*

**BRIEF IN RESPONSE TO
PETITION FOR CERTIORARI.**

The Washington Post Company and Ben H. Bagdikian file this response to the petition for certiorari before final judgment filed by the Solicitor General on behalf of the Attorney General of the United States and the Director of the United States Bureau of Prisons.

OPINIONS BELOW

The initial opinion of the district court is reported at 357 F. Supp. 770 (D.D.C. 1972). The order of the court of appeals is reported at 477 F.2d 1108 (D.C. Cir. 1972). The opinion of the district court on remand is reported at 357 F. Supp. 770 (D.D.C. 1972).

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

REGULATION INVOLVED

The regulation is set forth at pages 2, 40-45 of the petition.

QUESTION PRESENTED

Whether the regulation of the United States Bureau of Prisons prohibiting all individual face-to-face interviews between members of the press and particular federal prison inmates in all correctional institutions, at all times and under all circumstances, violates the First Amendment.

STATEMENT

For present purposes, the case is adequately stated at pages 2-6 of the petition.

ARGUMENT

Respondents agree with petitioners that this case presents issues closely related to those involved in *Procunier v. Hillery*, No. 73-754, probable jurisdiction noted, January 7, 1974, and *Pell v. Procunier*, No. 73-918, probable jurisdiction noted, January 21, 1974. The federal prohibition of press interviews with prison

inmates, United States Bureau of Prisons Policy Statement No. 1220.1A, § (6), is essentially indistinguishable from California's total prohibition, California Department of Corrections Manual § 415.017, at issue in *Procunier and Pelt*.

Respondents further agree with petitioners in believing that in ruling upon these issues this Court would be aided by having before it the record made in the instant case. That record includes the testimony of numerous expert witnesses on the respective press and correctional interests at stake. It also includes a collection of documents setting forth the policies of numerous state and local jurisdictions on interviews between newsmen and prisoners.

On the press interest, the court heard live testimony from Ben H. Bagdikian, formerly Assistant Managing Editor of the Washington Post, who has extensive experience in reporting on prisons; Timothy Leland, Assistant Managing Editor of the Boston Globe and a Pulitzer Prize Winner; Roy M. Fisher, Dean of the University of Missouri School of Journalism; and Arthur L. Liman, General Counsel to the New York State Special Commission on Attien, who conducted the largest project of interviewing prison inmates ever undertaken by persons other than correctional officials. The court also received deposition testimony from Elie Abel, Dean of the Graduate School of Journalism at Columbia University, and John Machneck, a reporter for the Rochester Times-Union who won a Pulitzer Prize for his coverage of the Attien uprising.

On the correctional interests, the court heard live testimony from Normal Carlson, Director of the United States Bureau of Prisons; Noah L. Aldredge, Warden

of the federal penitentiary at Lewisburg, Pennsylvania, and subsequently warden at Terre Haute, Ind.; John J. Norton, Warden at the federal correctional facility at Danbury, Connecticut; Raymond K. Procutner, Commissioner of Corrections for California (appellant in *Procutner v. Hillery* and appellee in *Pell v. Procutner*); Benjamin Malcolm, Commissioner of Corrections for New York City; John O. Boone, Commissioner of Corrections for Massachusetts, and a former federal prison official; Louis L. Wainwright, Director of Corrections for Florida; Lou V. Brewer, Warden of the Iowa State Penitentiary; and Leroy Anderson, Executive Assistant to the Director of the Department of Corrections for the District of Columbia. In addition, the court received deposition testimony from Peter B. Bensinger, Director of Corrections for Illinois and President of the Association of State Correctional Administrators; and from Hans W. Mattick, a sociologist of prisons and former operating head of the Cook County (Illinois) Jail.

Although respondents believe that this Court would be aided by having the benefit of an opinion from the District of Columbia Circuit in the instant case, we have no reason to believe that the court's opinion will be issued prior to decision by this Court in *Procutner v. Hillery* and *Pell v. Procutner*. For this reason, and in view of the comprehensiveness of the record made below, respondents do not oppose the granting of certiorari. Respondents do, however, submit that the judgment below is fully correct for the reasons stated in the opinions of the district court.

Petitioners have stated that if certiorari is granted they will file their brief in time to permit this case to

be argued this Term together with the *Procunier* cases. Respondents offer the same commitment, but ask that the briefing schedule allow us at least two weeks between service of petitioners' brief on the merits and the filing of our brief. A large part of that two weeks time will be consumed by printing.

CONCLUSION

For the foregoing reasons, respondents do not oppose the granting of certiorari.

Respectfully submitted,

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